

SOUTH AFRICA / JUDGMENT

Precious v Dove (12979/2008) [2008] ZAWCHC 246 (15 August 2008)

[2008] ZAWCHC 246**COURT**

Western Cape High Court, Cape Town

BEFORE

Allie

CASE / FILE NUMBER

12979/2008

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JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)THIRD
DIVISIONCASE NO: 12979/2008

DATE: 15 AUGUST 2008

In the matter between:

SIHLE PRECIOUS APPLICANT

versus

SHELA DOLVE RESPONDENT

ALLIE, J

I have read the papers in this matter, I have been handed the opposing papers this morning, I have read the papers In this matter, I have heard counsel in this matter, extensive submissions made on behalf of applicant. I am of the view that in relation to the child's access to her father Ghanna, both the applicant and the respondent have been rather remiss in making an arrangement which would really be in the interests of the child and in the interests of Ghanna to have access to the child.

I am of the view that the child does have a right to see her father, and it may be necessary to see her father more than once per week given the fragile state that he currently appears to be in. However, I believe that the person best placed to determine how often and for what lengths of time the child should see the father would be the medical doctor attending to the father, who appears to be in an extremely fragile state.

However, I am not persuaded that the applicant has made out a case on these papers as to why she should be granted the right to visit Ghanna Dolve and I am not even taking cognisance of the hearsay evidence purely on the applicant's papers, it is not clear that the applicant has made out a case as to why she should be allowed to see Ghanna Dolve, other than her allegation that the child is of a young and tender age and that allegation is countered by the opposing papers which say that the child has had access to the father, a sleep over access, in the presence of the respondent previously, so the respondent is not a complete stranger to the child, and it is in the respondent's home in which Ghanna currently is residing, and one cannot make inroads into a person's right to exercise access to his or her property as he or she deems fit, unless it is in the interests of. of course this instance the child and also in the interests of the father, so I am not granting an order that the applicant herself has the right to visit Ghanna Dolve, if she is granted permission to see him that will be entirely something which the parties to outside of the purview of this order.

However, it is clear that both parties, as I have said, have been remiss, in not ensuring that the child has more regular contact with the father, given the fact that she is currently in Cape Town and usually resides outside of Cape Town, and so bearing that in mind, and although the applicant is partially successful in as much as I am prepared to grant an order authorising the child access to the father, given the conduct of the parties, both prior to the bringing of this application, and at the time of the bringing of this application, I am only prepared to order that each party pays his or her own costs.

So my order will then be as follows;

That the RESPONDENT IS ORDERED TO ALLOW THE MINOR CHILD, SITZANZELE SONYA DOLVE, THE RIGHT TO VISIT HER BIOLOGICAL FATHER, GHANNA DOLVE, during all reasonable times, which reasonable times will be determined by the medical practitioner of Ghanna Dolve, who is Dr

Bernard Zain Grevler, and that each party is ordered to pay its costs in this matter.

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